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An Eight-Hour Decision

By

Hon. Walter Clark

Chief Justice of the North Carolina Supreme Court

Acting as Umpire in the Case of
Iron Molders' Union, No. 364
(Wheeling, W. Va.), *versus* the
Wheeling Mold & Foundry Co.

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NATIONAL WAR LABOR BOARD

Docket No. 37

MOLDERS vs. WHEELING MOLD & FOUNDRY CO. WHEELING, W. VA.

OPINION BY THE UMPIRE.

This case has been submitted to the Board upon the following "Agreement entered into between the members of Local Union No. 364, International Molders' Union of North America, and the Foundrymen of Wheeling and vicinity."

First: That eight (8) hours constitute a day's work for all Molders and Coremakers.

Second: That the wage rate be six dollars and fifty cents for the basic eight (8) hour working day.

Third: All overtime shall be paid for at the rate of time and one-half.

Fourth: Sundays and legal holidays, as provided for in the constitution of the I. M. U. of N. A. (viz., Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas and New Year's Day) be paid for at the rate of double time.

The only controversy presented is as to the meaning of paragraph 1.

It is clear that that paragraph standing alone would mean the eight (8) hour working day, beyond which the employes can not be required or permitted to work. Upon the principle that the whole of an agreement should be construed together so that no part shall be invalid, section 2 can not be held as substituting a basic eight (8) hour day for the actual eight (8) hour day provided by section 1. It is not reasonable to suppose that the employes having agreed upon an eight-hour day, should by the next rule repeal it, by substituting a ten or twelve hour day for extra compensation.

The basic eight-hour rule is not an eight-hour day at all but simply a wage agreement. If the eight-hour day is extended to ten hours then the 50 per cent added pay for the two extra hours in effect is an agreement to pay eleven hours wages for ten hours work, an increase of 10 per cent. It was doubtless thought that the extra 50

per cent for the extra hours would discourage requiring extra hours, but this has not been the result in all cases, for in some plants ten hours from day to day, every day, has been exacted, and in others even thirteen hours a day has been known to be required. The object of the eight-hour law is to protect the health and lengthen the lives of employes, which would be seriously compromised by an excessive length of the day's work.

It has been seriously contended that the "Principles" adopted by this Board deprive it of jurisdiction to enforce an actual eight-hour day. Those principles, however, specify that in all cases in which existing law does not require the basic eight-hour day, "the question of hours of labor shall be settled with due regard to governmental necessities and the welfare, health and proper comfort of the workers."

President Wilson, in his address before a joint session of the two houses of Congress 29 Aug., 1916, said that "The whole spirit of the time, and the preponderant evidence of recent economic experience spoke for the eight-hour day. It has been adjudged by the thought and experience of recent years, a thing upon which society is justified in insisting as in the interest of health, efficiency, contentment and a general increase of economic vigor. The whole presumption of modern experience would, it seemed to me, be in its favor, whether there was arbitration or not, and the debatable points to settle were those which arose out of the acceptance of the eight-hour day, rather than those which affected its establishment. I, therefore, propose that the eight-hour day be adopted by the railroad managements, and put into practice for the present as a substitute for the existing ten-hour basis of pay and service." And he recommended "the establishment of an eight-hour day as the legal basis alike of work and of wages in the employment of all railway employes who are actually engaged in the work of operating trains in interstate transportation." Congress enacted what is known as the "Adamson Eight-Hour Law" in consequence.

Previous to that time the Federal eight-hour law, approved 19 June, 1912, limited "the hours of daily service of laborers and mechanics employed upon work done for the United States, or for any territory or for the District of Columbia," to eight hours, and provided that no laborer or mechanic so employed should "be required or permitted to work more than eight hours in any one calendar day, upon such work."

Judge Alschuler, in his decision in the Packing House Case, quotes

the above expression of the President, and says: "The Public policy of the eight-hour workday has been given oft-repeated sanction by legislation in the majority of the states, as well as by Congress, through enactments of various kinds too numerous for specific mention," and quotes the unanimous report of the President's mediation commission on 9 Jan., 1918, which declared "The eight-hour day is the established policy of the country." He further said: "The voluminous evidence adduced at the hearing in support of the contention for the eight-hour day is in the main logical and convincing, and it is particularly to be noted that in so far as concerns the general principle of the right-hour day no evidence to dispute it was presented. Indeed on behalf of the employers it was repeatedly, openly and frankly, admitted that a workday shorter than the ten-hour day was desirable. On behalf of the employers and in the presence of their superintendents it was freely stated that they all believed in a shorter workday; that they had said so, and that there was no room for argument about it." There is a vast body of experience that a ten-hour day shortens the lives of the employes, injures their health, and that in point of production there is an increase by the substitution of eight hours for a longer period. Even if this were not true as to one day, the accumulated fatigue of working more than eight hours for a series of days reduces the production below the quantity produced by strict adherence to that limit.

Especially is this so as to the molder's occupation, the life of whom, working at nine or ten hours per day, subject to the heat and noxious fumes, is said to average not more than 14 years. In work of this kind, there can be no doubt that greater production will be had by the working of an eight-hour day than by working nine or ten hours.

It is not conclusive, though a subject for consideration, that the majority of the other shops in Wheeling and vicinity are working on a nine-hour basis. All betterment has come by improving conditions, and not continuing them when bad. Improving conditions is the object of this proceeding.

The subject of an eight-hour day is not new, but has been discussed by the general public, by writers and public men and governmental officials for many years. The first act for an eight-hour day was passed by Congress in June, 1868, and provided "Eight hours shall constitute a day's work for all laborers, workmen and mechanics who may be employed by or on behalf of the government

of the United States." This Act proved ineffective because, for some reason, Congress had failed to impose any penalty for violation of the act. More effective laws on the subject were passed and were approved 1 Aug., 1892, 19 June, 1912, and in the amendment to the Naval Appropriation bill, approved 3 May, 1917. The latter amended the statute which had authorized the President to suspend the eight-hour law "whenever government necessity required it," by providing that while the President in an emergency could suspend the eight-hour day in such case, the basic eight hour day should obtain and overtime should be paid for at no less than time and one-half.

Since that time the President has acted in conformity with the act but his suspension applies only to the prohibition of working more than eight hours, and does not require it. It is still open to the employes to decline to work longer than eight hours, and in event of a difference with their employers to submit the matter to the National War Labor Board.

The railroad employes, from coast to coast, nearly 500,000 in number, are now operating on the basis of the eight-hour day. The same is true of the coal-mining industry, the packing industry, the news print industry, the garment industry, in Government construction, and in the lumber mills and saw mills of the great Northwest.

It may be that there are industries where it is still necessary to use a longer workday than eight hours during the duration of the war, but it does not seem that in consideration of the conditions that more than eight hours should be exacted in the work that a molder has to perform.

It is the consensus, as President Wilson stated, of students of the subject, that the maximum production is to be had by the adoption of the eight-hour day; and that the preservation of the health and the lives of the employes will be promoted by that limitation.

The employers have, as a rule, patriotically given full aid to the prosecution of the war by placing their splendid plants and their highly skilled chiefs at the service of the Government. The employes, as a rule, have also, with the same patriotism, yielded the eight-hour limitation wherever it has been necessary to speed up production for the Government. The former have *received* great increase in profit. The latter have *contributed* an increase in the hours of labor, and vast numbers of men to fill our armies. The former have received from the Government; the latter have given to it. They should not be asked to do so, beyond the necessity of the occasion.

The "Census of Manufacturers" for 1914, page 482, shows more than 7,000,000 industrial employes, of whom not more than 12 per cent were under the eight-hour day. This number has since been increased considerably, but not as rapidly as would have been the case, but for the emergency of the war. Statistics also show that while Australia and New Zealand have frankly adopted the eight-hour day limit in all their industries, in this country the average is still above that figure. This is largely due to the fact that in the southern mill industry the limit is still 60 hours per week and in the northern mills 54 hours.

This, however, is no reason why more than eight hours should be required of the molders, whose trade exacts greater fatigue and exposure to noxious and dangerous fumes.

That the country has not yet reached the eight-hour day in all cases is no reason why in this case it should not be upheld. Indeed it may be well considered that as the world and especially all free countries are "on their way" to the adoption of the eight-hour law, might it not be for the interest of the employers frankly to accept it, and avoid the constant struggle for its attainment by settling the question, once for all.

When industries were on a small scale and the employer and the employe worked together, face to face, the fellow-servant doctrine was created by the courts which exempted the employer from liability for injury inflicted upon an employe by the negligence of his fellow-servant, upon the ground that the servant contracted with a knowledge of the character of his co-employees. This became absurd when there were thousands of employes engaged in the same employment, but it has required statute after statute to change the judge-made law which had exempted the employer.

In like manner, until very recently, and until changed by statute, the courts held that if an employe contributed in any degree by his own negligence to the injuries he sustained, he could not recover. For this there has now been substituted by an enlightened statute the provision that the damage shall be apportioned, and that the business shall bear part at least of the loss and the crippled employe shall not bear it all, or his destitute wife and children, in case of his death. For the same reason an employe, one of many thousands, is unable to contract on equal terms, either as to hours of labor, or rate of wages, or proper sanitation, with the employers of vast numbers of men. The law must step in and require protection in these particulars of its citizens against injury to their health, or

shortening of their lives by the fatigue of excessive hours, inadequate wages, and lack of sanitary provisions.

By the introduction of machinery and numerous inventions, production has been increased many fold, in some cases a thousand-fold. It is not just that the profit accruing therefrom shall go to the employers alone, without the employes receiving a fair share of the vastly increased profits.

In *Pressly vs. Yarn Mill*, 138 N. C., 424, it was said by this writer: "The law is not fossilized. It is a growth. It grows more just with the growing humanity of the age, and broadens 'with the process of the suns.' . . . Labor is the basis of civilization. Let to withhold its hand, and the forests return and grass grows in the silent streets. Not so long since, in England, labor unions were indictable as conspiracies. The wages of laborers were fixed by officers appointed by capital, and it was indictable for a laborer to ask or receive more. There was no requirement that employers should furnish safe appliances, no limitations as to hours of labor, no age limit. With the era of more just legislation in this country and England, and elsewhere, shortening the hours of labor, forbidding child labor, requiring sanitary provisions, and safe appliances, labor has been encouraged, and the progress of the world in a few years has more than equalled that of all the centuries that are dead. Justice to the laborer has been to the profit of the employer. The courts should not be less just than the laws."

While an eight-hour day is stipulated for in paragraph 1 of the agreement, there are emergencies likely to occur when for a brief period that limit may be exceeded. But the protection of the eight-hour day will amount to nothing if it rests with the employer alone to declare the emergency. The fifty per cent allowed for overtime is too small a penalty in view of great profits that may arise. It is true that what is "an emergency" can be and has been defined. Still it rests with the employer to declare that the facts place the demand within the definition of an emergency. Such emergencies can ordinarily be met by the adoption of the three-shift system or an increase in machinery. It is better that the machinery should be worn out than the bodies of the employes. Man passes through this world but once, and he is entitled in the language of the great declaration to some "enjoyment of life, liberty, and the pursuit of happiness."

It has been suggested, as some protection against the abuse of constantly exceeding the limitation of hours by the employer declaring in his judgment "an emergency" to exist, that such extra

days should be limited to three days in the week. This would only be a very partial remedy, for if the employe is overworked three days in the week his product will not only fall off during those days, but also during the remaining days of the week. A better plan would seem to be a provision that the employer shall appoint a standing committee of two, and the employes a similar committee of two, and as the burden of establishing an emergency is upon those who assert it, the eight-hour limitation should not be exceeded unless at least three members of the joint committee of four agree that there is an emergency justifying working overtime. This would avoid also the objection that if there was only one member of the committee on each side, factious opposition by the representative of labor might prevent operation even when there was an emergency requiring it.

For these reasons the following is

The Award.

The molders employed by the Wheeling Molders & Foundry Co., at Wheeling, W. Virginia, shall not be required or permitted to work more than eight hours within any day of twenty-four hours, except in cases of emergency, and then under the following terms and conditions:

1. Overtime work shall be paid for at the rate of time and one-half for all hours worked in excess of eight hours, with double time for Sundays and holidays.

2. The question whether or not an emergency exists, together with the length of time over which such emergency may extend, and the number of extra hours per day, shall be determined by agreement between the management and the working molders in the shop.

3. For the purpose of effectuating the agreement mentioned in paragraph 2, a permanent committee of four persons is hereby created, two of whom shall be designated by the management of the plant and two by the working molders in the shop, the assent of at least three of whom shall be necessary for permission to work more than eight hours in any day of twenty-four hours.

4. *Interpretation of Award.*—For the purpose of securing a proper interpretation of this award, the secretary of the National War Labor Board shall appoint an examiner, who shall hear any difference arising in respect to the award between the parties and promptly render his decision, from which an appeal may be taken by either party to the National War Labor Board. Pending such appeal, the decision of the examiner shall be binding.

16 Sept., 1918.

WALTER CLARK,

Umpire.

Henry G. Labadie